

### **REMARKS**

The Final Office Action mailed December 12, 2007 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

#### **Drawings**

The drawings were objected to because the feature from claim 31 of “the front face of the speaker [being] directed substantially forward, in the direction the user is facing,” is allegedly not shown. Applicants respectfully disagree. Speaker 204 is disposed on neck member 103, as seen in for example FIG. 1. The front face 402 of speaker 204, best seen in FIG. 11, is depicted as confronting cap 104 and, in FIG. 5, is shown pointing away from the bulky, bulbous portion of earset housing 101. In the orientation of FIGS. 12 and 13, speaker 204, although not seen, points out of the page because it confronts cap 104 and is disposed on neck 103, as explained above. FIGS. 12 and 13 depict the wearer also facing forward, out of the page, because when the earset assembly 90 is worn, neck 103 rests on the front part of the ear, while the bulbous portion of earset housing 101 rests on the back of ear, as seen in FIG. 15. Accordingly, FIGS. 12 and 13 show the face of the wearer (although features of the face, such as eyes, are not shown), and indicate a forward-facing speaker 204, which is just behind the cap 104 shown. (If cap 104 were omitted from FIGS. 12 and 13, front face 402 of speaker 204 would become visible.) For this reason “the front face of the speaker [being] directed substantially forward, in the direction the user is facing” from claim 31 is an accurate representation of the invention, and is depicted in the drawings when considered collectively. Withdrawal of the objection to claim 31 is therefore respectfully requested.

#### **Amendment to Claims**

Only claim 31 has been amended, to obviate the antecedent basis issue addressed below. The amendment does not raise any issues beyond those already considered by the Examiner.

#### **Rejection(s) Under 35 U.S.C. § 112, Second Paragraph**

Claim 31 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 31 has been amended to replace “the front face” with “a front face,”

obviating the alleged antecedent basis issue. The amendment does not raise any issues beyond those already considered by the Examiner.

**Rejection(s) Under 35 U.S.C. § 102**

Claims 1-2, 6-8 and 24-26 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Nassimi (U.S. pat. no. 7,212,646). Applicants respectfully traverse.

Nassimi '646 has a filing date of May 24, 2005, and is a continuation-in-art of Nassimi '476, which has a filing date of September 30, 2002. The present application has a filing date of January 13, 2004, which is before that of Nassimi '646 and after that of Nassimi '476.

Nassimi '476 does not disclose "a rotatable cap" (claim 1), or a cap that is "rotatably coupled" (claim 24). Accordingly, the benefit of the September 30, 2002 date of Nassimi '476 cannot be extended to this feature. On the other hand, the May 24, 2005 filing date of Nassimi '646, which is alleged to contain this feature, is *after* the January 13, 2004 filing date of the present application. Therefore Nassimi '646 is not prior art against the present application. Accordingly, the anticipation rejection of claims 1 and 24, and of claims 2-13 and 25-31 dependent therefrom, based on Nassimi '646 is improper and should be withdrawn.

Claims 1, 10-12, 24 and 27-29 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Oliveira et al. (U.S. pub. no. 2005/0147269). Applicants respectfully traverse.

Oliveira et al. is not prior art against claims 1, 10-12, 24 and 27-29 because the present invention was invented before the January 7, 2004, filing date of Oliveira et al. Applicants submit herewith a declaration under 37 CFR 1.131 and supporting Exhibits attesting to this.

**Rejection(s) Under 35 U.S.C. § 103 (a)**

Claims 3-5, 9, 13 and 30-31 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nassimi '646.

As explained above, Nassimi '646 is not prior art against the invention of the base claims 1, 14 and 24 from which claims 3-5, 9, 13 and 30-31 depend, and the obviousness rejection based on Nassimi '646 is improper and should be withdrawn.

**Request for Entry of Amendment**

Entry of this Amendment will place the Application in better condition for allowance, or at the least, narrow any issues for an appeal. Accordingly, entry of this Amendment is appropriate and is respectfully requested.

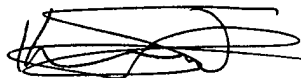
**Conclusion**

In view of the preceding discussion, Applicants respectfully urge that the claims of the present application define patentable subject matter and should be passed to allowance.

If the Examiner believes that a telephone call would help advance prosecution of the present invention, the Examiner is kindly invited to call the undersigned attorney at the number below.

Please charge any additional required fees, including those necessary to obtain extensions of time to render timely the filing of the instant Amendment and/or Reply to Office Action, or credit any overpayment not otherwise credited, to our deposit account no. 50-1698.

Respectfully submitted,  
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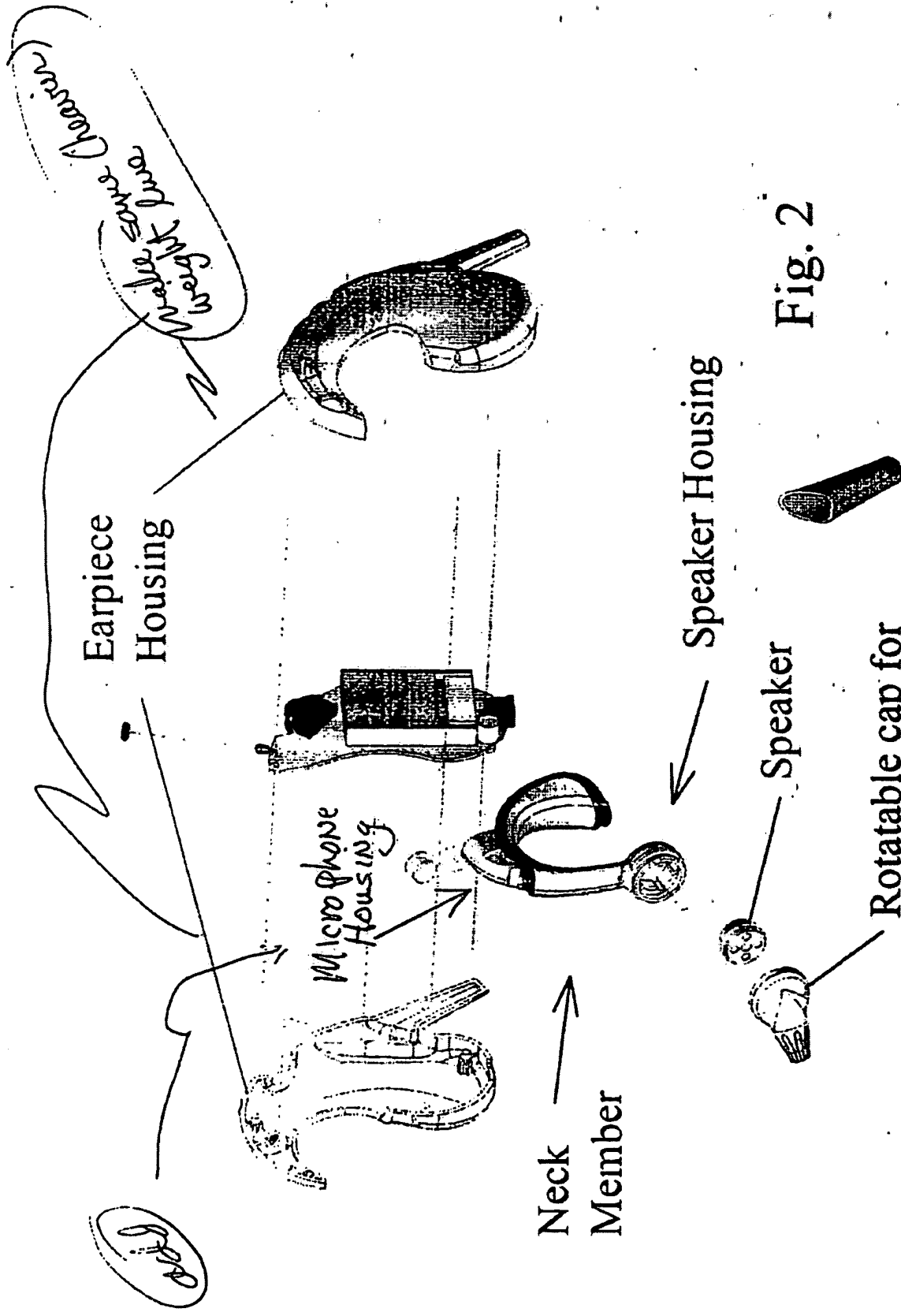


Fig. 2

providing sound communication from the speaker to the ear canal of a user